

10/612,254



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

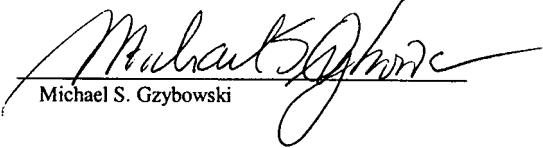
Group
Art Unit: 3652

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Attorney
Docket No.: 121046-001

on October 10, 2007

Applicant: Michael LAMBRIGHT


Michael S. Gzybowski

Invention: SPARE TIRE STORAGE APPARATUS

Serial No.: 10/612,254

Filed: July 2, 2003

Examiner: Gregory Adams

CORRECTED BRIEF ON APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to Appellant's Notice of Appeal filed May 14, 2007 in connection with the above-identified application, appellant submits the present Brief on Appeal.

REAL PARTY IN INTEREST

Appellant has not assigned this application to any entity and is therefore the real party in interest. Accordingly, the real party in interest is appellant whose name as listed above is Michael LAMBRIGHT.

RELATED APPEALS AND INTERFERENCES

There are no related cases involved in any appeal procedures or Interferences.

STATUS OF CLAIMS

Claims 1, 3, 5-9, 11, and 13-22 are pending in this application. Claims 1, 3, 5-9, 11, and 13-22 stand under Final Rejection, from which rejection of claims 1, 3, 5-9, 11, and 13-22 this appeal is taken. Claims 2, 4, 10 and 12 have been canceled during the prosecution of the application. No other claims are pending.

STATUS OF AMENDMENTS

An Amendment After Final Rejection was filed on April 16, 2007 in which proposed amendments to the claims were submitted. In an Advisory Action mailed May 2, 2007, the Examiner indicated that the amendments to the claims would be entered for purposes of appeal. The Amendment After Final Rejection canceled claims 4 and 12 and amended independent claims 1 and 9 to include language that was suggested by the Examiner.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention as set forth in independent claim 1 is directed to a spare tire carrier for vehicles which comprises:

a support arm (reference no. 2, page 6, line 3 and Figs. 1 and 2) for mounting a spare tire thereon, said support arm having a fixed end (pivotally attached to a portion of the frame by a

cooperating tubular assembly 5,"page 6, lines 3-4), a free end (page 8, lines 11-12) and a central axis; and

a cooperating tubular assembly (reference no. 5, page 6, line 4 and Figs. 1, 2 and 5)

coupled to the fixed end of the support arm for mounting the support arm on a vehicle,

said cooperating tubular assembly including upper and lower tubular members (reference nos. 7 and 6, page 7, lines 13-14 and Figs. 2 and 5) and upper and lower opposed planar guide plates (reference nos. 10 and 9, page 8, lines 6-10 and Figs. 2 and 5) wherein the upper guide plate is attached to the upper tubular member and the lower guide plate is attached to the lower tubular member and the upper and lower opposed planar guide plates are coupled together so as to allow for relative rotational movement of said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates (page 8, lines 6-10), whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly (page 11, lines 9-13), said upper and lower tubular members having a common central axis of pivot (that necessarily coincides with threaded element 22 discussed on page 10, lines 4-12 and shown in Fig. 5) .

The present invention as set forth in independent claim 9 is directed a vehicle including a spare tire carrier mounted to an under side of the vehicle, which spare tire carrier comprises:

a support arm (reference no. 2. page 6, line 3 and Figs. 1 and 2) for mounting a spare tire thereon, said support arm having a fixed end (pivotally attached to a portion of the frame by a

cooperating tubular assembly 5,"page 6, lines 3-4), a free end (page 8, lines 11-12) and a central axis; and

a cooperating tubular assembly (reference no. 5, page 6, line 4 and Figs. 1, 2 and 5) coupled to the fixed end of the support to the under side of the vehicle,
said cooperating tubular assembly including upper and lower tubular members (reference nos. 7 and 6, page 7, lines 13-14 and Figs. 2 and 5) and upper and lower opposed planar guide plates (reference nos. 10 and 9, page 8, lines 6-10 and Figs. 2 and 5) wherein the upper guide plate is attached to the upper tubular member and the lower guide plate is attached to the lower tubular member and the upper and lower opposed planar guide plates are coupled together so as to allow for relative rotational movement of said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates (page 8, lines 6-10), whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly (page 11, lines 9-13) , said upper and lower tubular members having a common central axis of pivot (that necessarily coincides with threaded element 22 discussed on page 10, lines 4-12 and shown in Fig. 5) .

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 3, 5-9, 11, 13-22 are anticipated under 35 U.S.C. §102(b) by Chandler.

ARGUMENT

With respect to claims 1, 9, 18-20 and 22, the Examiner has relied upon Chandler as disclosing:

...a support arm 23 having an axis and capable of supporting a spare tire, and further discloses an upper planar guide plate 53 attached to an upper tubular member 27F, lower planar guide plate 59 attached to a lower tubular assembly (61 in FIG. 7) wherein an upper plate is coupled to a lower plate for relative rotational movement for rotating an arm 23 about a common axis and a support arm central axis (see FIGS 16-17).

With respect to claims 3-5 and 11-13 the Examiner has relied upon Chandler as disclosing:

...upper and lower tubular members each having a central axis and are attached at an angle that is non-perpendicular (FIG. 7, angle α) and are collinear and hollow.

With respect to claims 6, 7, 14 and 15 the Examiner has relied upon Chandler as disclosing “an axially central element 65 having threads.”

With respect to claims 8 and 16 the Examiner has relied upon Chandler as disclosing “a latch mechanism 41.”

With respect to claim 17 the Examiner has relied upon Chandler as disclosing “an arm 23 that includes structure that engages a latch mechanism 41.”

With respect to claim 21 the Examiner has relied upon Chandler as disclosing “a tire mounting bracket 79.”

The Examiner has taken the position that:

With respect to tubular members, we need only a structure that defines a tube. Chandler’s tubes 27 & 61, 63 are clearly tubes as they define walls with a hollow middle. Applicant argues that Chandler’s plates 61 & 63 are not tubes but plates, but

Chandlers plates 61, 63 along with the underside of arm 23 define a body having walls and a hollow middle.

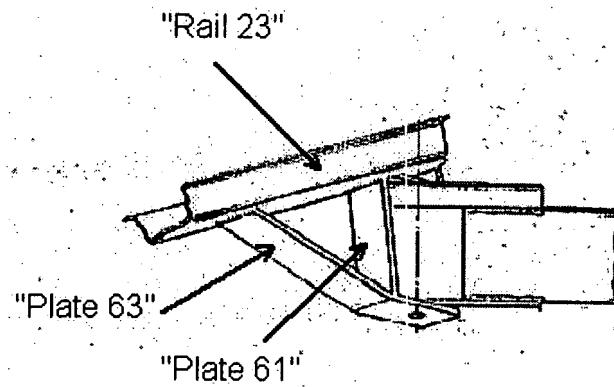
As defined in Webster's Dictionary (See www.webster.com), "tubular" means:

having the form of or consisting of a tube.

As further defined in Webster's Dictionary (See www.webster.com), "tube" means:

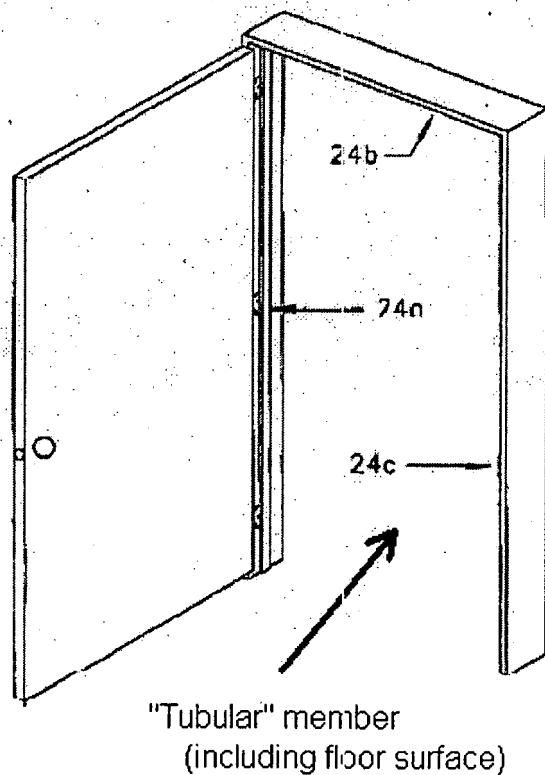
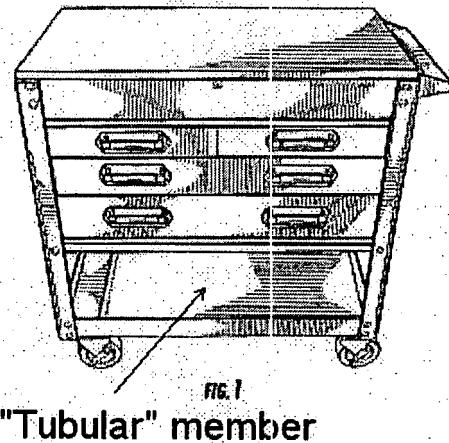
1 : any of various usually cylindrical structures or devices: as a : a hollow elongated cylinder; especially : one to convey fluids b : a soft tubular container whose contents (as toothpaste) can be removed by squeezing c (1) : TUNNEL (2) British : SUBWAY b d : the basically cylindrical section between the mouthpiece and bell that is the fundamental part of a wind instrument

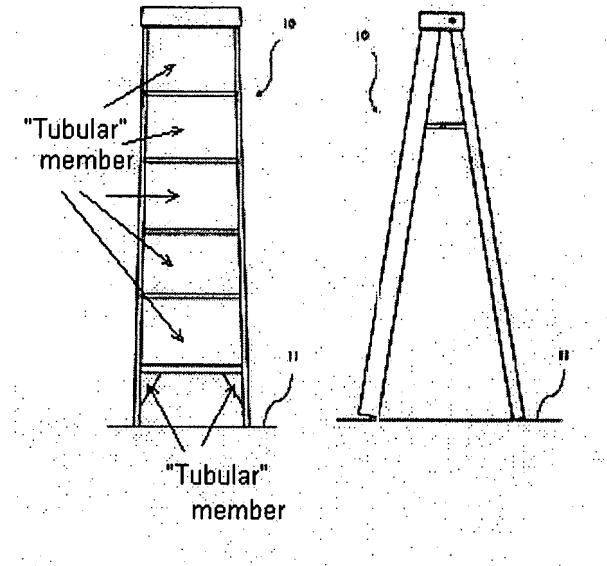
The Examiner has taken the position that the following structure of Chandler can be construed as a "tubular" member:



The Examiner's definition of "tubular" appears to be "a body having walls and a hollow middle" as stated by the Examiner on page 4 of the Office Action.

If the Examiner's definition were followed, it is submitted that the following would all be "tubular" members:





Note: of the above the lower "tubular" members of the ladder that are defined in part by the angled bracket are most similar to structure of Chandler which the Examiner has relied upon.

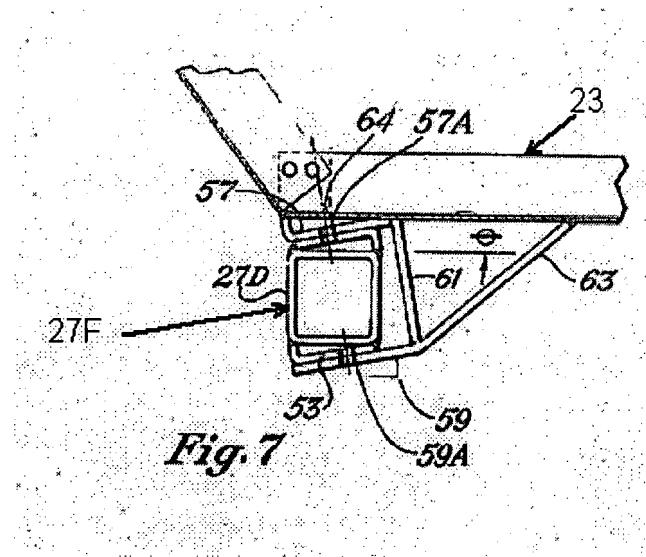
It is submitted that those skilled in the art would not consider any of the above structures as "tubular" members.

Moreover, those skilled in the art would not consider the plates 61 and 63 of Chandler as forming a "tubular" member.

On page 3 of the Office Action the Examiner states:

Chandler's upper tubular member 27F is at least above upper guide plate 53, upper guide plate 53 is at least above lower guide plate 59 and lower tubular member (indicated generally as 61) and lower guide plate are at least below arm 23.

Fig. 7 of Chandler best shows the arrangement the Examiner is referring to:



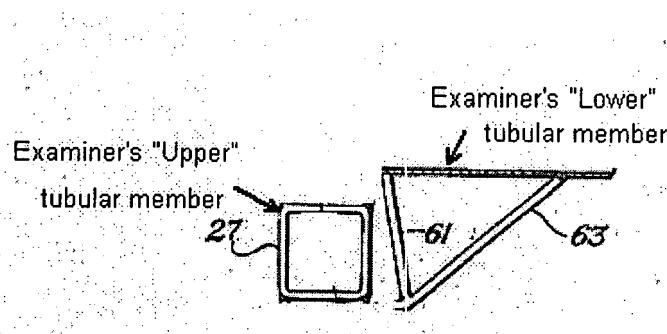
While the Examiner has noted that:

- 1) Tubular member 27F is at least above upper guide plate 53;
- 2) Upper guide plate 53 is at least above lower guide plate 59; and
- 3) Lower tubular member (indicated generally as 61) and lower guide plate are at least below

arm 23,

it is noted that the Examiner has argued that the lower “tubular” member is defined by plates 61 and 63 and “the underside of arm 23.”

Isolating the upper tubular member from the lower tubular member in Fig. 7 results in the following:



As can be seen, if anything the Examiner's "lower" tubular member extends above the Examiner's "upper" tubular member.

Certainly one skilled in the art would not conclude from Chandler's Fig. 7 (or any other figure) that the elements the Examiner has identified are readable on appellant's claimed "upper" and "lower" tubular members.

The only way to come up with such an interpretation is to rely upon appellant's own disclosure and even in such a case the interpretation is found to be completely unsupported.

In the Advisory Action of March 9, 2007 the Examiner stated that:

Whether one skilled in the art would consider a ladder, shelving or doorway as tubular is irrelevant because one skilled in the art of vehicle attached carriers would not look these [sic] arts when creating rotation about a support arm central axis while pivoting a support arm about a vertical axis. Using applicants definition (See Applicants Arguments page 9, line 13), Webster's Dictionary does not equate a tube to being tubular. Thus, the cited prior art must merely have tubular structure, i.e. tube-like, which Chandler's tubes 27, 61 & 63 clearly are. Moreover, another definition is that Applicants tubes are being used as a conduit, e.g. conveyance or conduit, but Applicant is not using said tubular structure as a conduit or conveyance, merely as supporting structure during movement. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention

from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Again, Chandler's "tubes 27, 61 & 63" (as construed by the Examiner) are illustrated as follows:

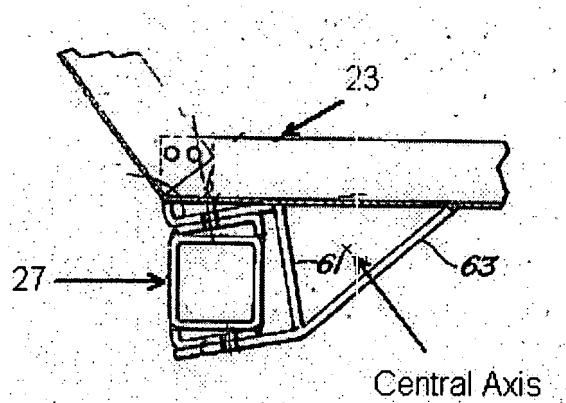
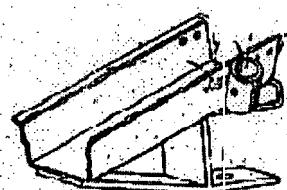


Fig. 7

Fig. 6 (partial)



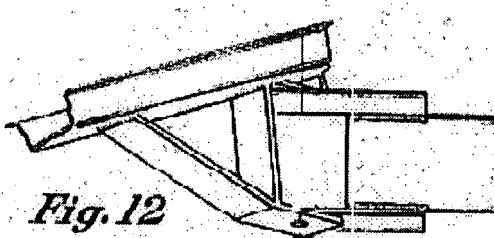


Fig. 12

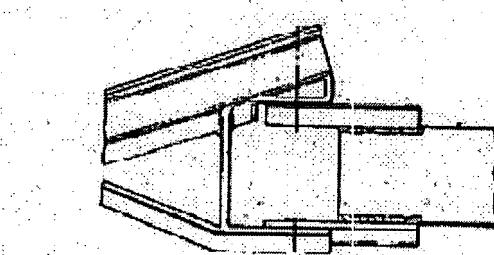


Fig. 13

It is unclear how under any circumstances, anyone skilled in any relevant technology would construe the structure formed by support plates 61 and 63 and support arm 27 to be a "tubular member."

As regards the Examiner's position that "Webster's Dictionary does not equate a tube to being tubular" it is noted that appellant is claiming "tubular members" and Webster's Dictionary defines "tubular" as:

1. having the form or shape of a tube; tubiform.
2. of or pertaining to a tube or tubes.
3. characterized by or consisting of tubes.

The Examiner's statement that "Applicant is not using said tubular structure as a conduit or conveyance" but "merely as supporting structure during movement," does not change the definition of tubular structure to cover the support plates which form a support bracket in Chandler.

In the Advisory Action of March 9, 2007 the Examiner further stated that:

Upper and lower are relative terms. Claims 1 & 9 do not define Applicant does [sic] an upper member above a lower member or a lower member below an upper member, merely an upper member connected to a lower member. Thus, Chandler's upper tubular member 27F is at least above upper guide plate 53, upper guide plate 53 is at least above lower guide plate 59 and lower tubular member (indicated generally as 61) and lower guide plate are at least below arm 23.

The Examiner cannot ignore the orientation of "upper" and "lower" when interpreting appellant's claimed invention or the prior art as would be understood by those skilled in the art, because of the environment and function. Certainly, the cycle carrier of Chandler could not be used in an inverted orientation.

The Examiner's "upper tubular member 27F" and "lower tubular assembly 61" of Chandler are shown as follows:

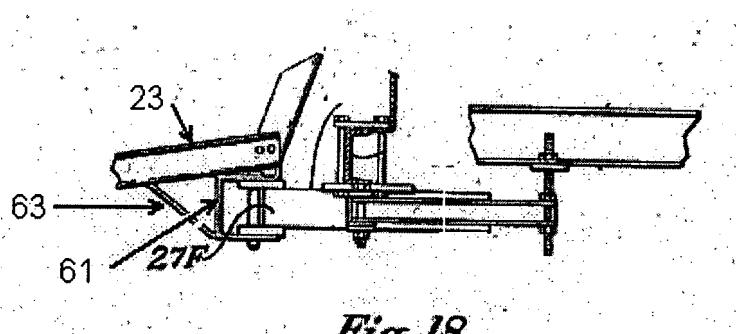


Fig. 18

It being noted that in the Advisory Action of March 9, 2007 that the Examiner argued that the lower tubular member comprised elements 61 and 63 - in no case can one find an orientation in which the Examiner's tubular member that comprises elements 61 and 63 are lower in reference to the Examiner's tubular member 27F.

In the Advisory Action of March 9, 2007 the Examiner further stated that:

Colinear is not a feature that is recited in claims 1 & 9. However, claim 4 recites colinear where colinear equates to structures which lie along the same line. Chandler's tubes lie on a line as they are at least adjacent. In addition, broadly construed tubular structure have an infinite number of lines. Applicant may wish to recite -cylindrical tubes having a common central axis of pivot—.

In response to this comment by the Examiner, claims 1 and 9 were amended to recite the upper and lower tubular members have a common central axis of pivot.

It is pointed out that the Examiner's "lower tubular member" of Chandler cannot be accurately construed as having a common central axis of pivot which is common with a central axis of pivot of the Examiner's "upper tubular member" of Chandler.

Note, if one were to properly construe a "tubular member" as having a "central axis," that central axis would conventionally extend through the center of the tubular member as in the case of appellant's upper and lower tubular members.

In the case of the Examiner's "lower tubular member" which is comprises or defined by plates 61 and 63 and support 23, the central axis of this structure would extend out of the page as shown in Fig. 7:

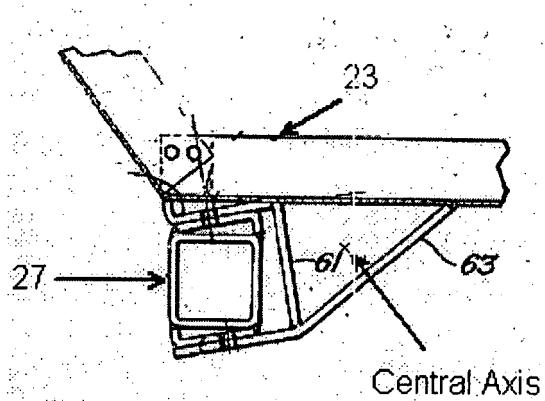


Fig. 7

and would never be common with the central axis of the Examiner's "upper tubular member."

The Examiner has made the statement:

Finally, with respect to claims 1 & 9 it is noted that the tubular structure provides no benefit beyond that of connecting guide plates to the arm. The guide plates rotate relative to each other to provide motion to arm 23. Thus, a channel or solid rod could connect said plates to arm as effectively.

This statement is not fully understood. Is the Examiner suggesting that it would be obvious to modify Chandler so that instead of using "tubular" structures, use "a channel or solid rod" to connect the guide plates to the arm? If however, the lower tubular member is defined by the lower surface of the arm, how can it be replaced with another structure and connected to itself?

In the Advisory Action of May 2, 2007 the Examiner has stated that:

With respect to claims 1, 9 & 18-20 & 22, referring to FIGS. 16-17 Chandler discloses a support arm 23 having an axis and capable of supporting a spare tire, and further discloses an upper planar guide plate 53 attached to an upper tubular member 27F, lower planar guide plate 59 attached to a lower tubular assembly (61 in FIG. 7) wherein an upper plate is coupled to a lower plate for relative rotational movement for rotating an arm 23 about a common axis 55 and a support arm central axis of

pivot 65, e.g. a central axis about which arm 23 rotates. It is noted that "common" and "central" are relative terms such that without a frame of reference any pivot axis can be a central axis and as long as the axis runs through the apparatus it is common to the tubes which comprise the apparatus.

It is noted that the Examiner himself suggest that the language "cylindrical tubes having a common central axis of pivot" differentiated or distinguished over "colinear where colinear equates to structures which lie along the same line" as set forth in the Advisory Action of March 9, 2007.

The Examiner's statement that:

It is noted that "common" and "central" are relative terms such that without a frame of reference any pivot axis can be a central axis and as long as the axis runs through the apparatus it is common to the tubes which comprise the apparatus

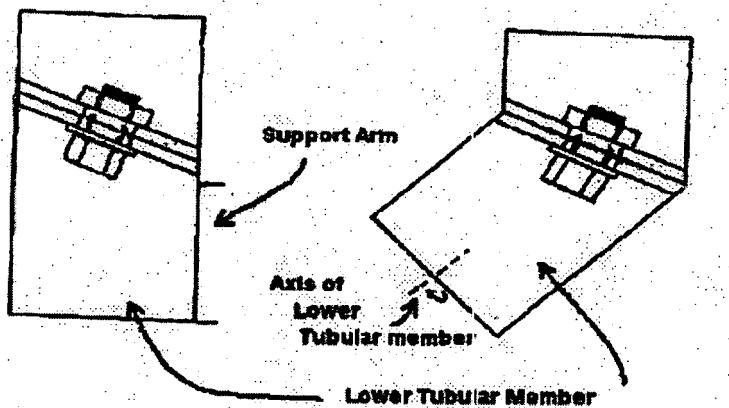
fails to consider that the "reference frame" is to "tubular members" in which case the by convention, the central axes of tubular members extends through the centers of such structures.

In general the Examiner has ignored common definitions of structural element (e.g. "tubular members") and reference frames (i.e., "upper," "lower" and "central axis") in an attempt to construe Chandler so as to read on the limitations of appellant's claimed invention.

It is extremely doubtful that one skilled in the art would interpret Chandler in the manner of the Examiner. It seems that in such a case, one skilled in the art would give Chandler a fair reading and consideration, whereas the Examiner has abandoned conventional definitions and reference frames in an attempt to conform and limit the teachings of Chandler to read on appellant's claimed invention.

It is noted that movement of appellant's carrier as effected by rotation of the upper and lower guide plates 9, 10 was explained to the Examiner in an Amendment filed June 20, 2005 using a

modification of Fig. 5 showing different positions produced by rotating the upper and lower guide plates about threaded element 22 as follows:



From this drawing the orientation of the upper and lower tubular members can be seen together with the manner in which the assembly functions as claimed whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly, said upper and lower tubular members having a common central axis of pivot.

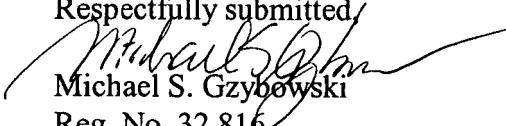
CONCLUSION

For the reasons advanced above, appellant respectfully contends that the rejection of claims 1, 3, 5-9, 11, and 13-22 under 35 U.S.C. §102(b) as being anticipated by Chandler is improper because Chandler does not anticipate the limitations of appellant's claimed invention.

Reversal of the rejection on appeal is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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182269.1

CLAIMS APPENDIX

Claim 1 (Previously presented): A spare tire carrier for vehicles which comprises:

 a support arm for mounting a spare tire thereon, said support arm having a fixed end, a free end and a central axis; and

 a cooperating tubular assembly coupled to the fixed end of the support arm for mounting the support arm on a vehicle,

 said cooperating tubular assembly including upper and lower tubular members and upper and lower opposed planar guide plates wherein the upper guide plate is attached to the upper tubular member and the lower guide plate is attached to the lower tubular member and the upper and lower opposed planar guide plates are coupled together so as to allow for relative rotational movement of said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates, whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly, said upper and lower tubular members having a common central axis of pivot.

Claim 2 (Canceled):

Claim 3 (Previously presented): A spare tire carrier for vehicles according to claim 1, wherein the upper and lower tubular members each have a central axis and the upper and lower guide plates are respectively attached to the upper and lower tubular members at an angle that is non-perpendicular to the central axes of the upper and lower tubular members.

Claim 4 (Canceled):

Claim 5 (Previously presented): A spare tire carrier for vehicles according to claim 1, wherein at least one of the upper and lower tubular members is hollow.

Claim 6 (Previously presented): A spare tire carrier for vehicles according to claim 1, wherein the upper and lower guide plates are coupled together about an axially central element that extends through at least one of the upper and lower guide plate.

Claim 7 (Original): A spare tire carrier for vehicles according to claim 6, wherein the axially central member comprises a threaded member.

Claim 8 (Original): A spare tire carrier for vehicles according to claim 1, further including a latch mechanism for engaging the free end of the support arm.

Claim 9 (Previously presented): A vehicle including a spare tire carrier mounted to an under side

of the vehicle, which spare tire carrier comprises:

 a support arm for mounting a spare tire thereon, said support arm having a fixed end and a free end and a central axis; and

 a cooperating tubular assembly coupling the fixed end of the support arm to the under side of the vehicle,

 said cooperating tubular assembly including upper and lower tubular members and upper and lower opposed planar guide plates wherein the upper guide plate is attached to the upper tubular member and the lower guide plate is attached to the lower tubular member and the upper and lower opposed planar guide plates are coupled together so as to allow for relative rotational movement of said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates, whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly, said upper and lower tubular members having a common central axis of pivot.

Claim 10 (Canceled):

Claim 11 (Previously presented): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, wherein the upper and lower tubular members each have a central axis and the upper and lower guide plates are respectively attached to the upper and

lower tubular members at an angle that is non-perpendicular to the central axes of the upper and lower tubular members.

Claim 12 (Canceled):

Claim 13 (Previously presented): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, wherein at least one of the upper and lower tubular members is hollow.

Claim 14 (Previously presented): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, wherein the upper and lower guide plates are coupled together about an axially central element that extends through at least one of the upper and lower guide plate.

Claim 15 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 14, wherein the axially central member comprises a threaded member.

Claim 16 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, further including a latch mechanism for engaging the free end of the support arm.

Claim 17 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 16, wherein the free end of the support arm includes structure for the latch mechanism to engage.

Claim 18 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, wherein the vehicle comprises one of a motor vehicle and a non-motor vehicle.

Claim 19 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 18, wherein the vehicle comprises a towed vehicle.

Claim 20 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 19, wherein the vehicle comprises one of a camper and a trailer.

Claim 21 (Previously presented): A spare tire carrier for vehicles according to claim 1, further including a tire mounting bracket on a central portion of the support arm.

Claim 22 (Previously presented): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, further including a tire mounting bracket on a central portion of the support arm.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None